

expenditure of funds from the Special Account. Following Secretarial decision, the approved projects will be posted on the SNPLMA website.

B. Final FLTFA Recommendation

The Land Transaction Facilitation Council considers the Nevada FLTFA Recommendation of the Executive Committee for FLTFA acquisitions and assembles a Final FLTFA Recommendation. The Final FLTFA Recommendation specifies the land and/or interest in land recommended for acquisition under the FLTFA in all states. The Final FLTFA Recommendation is transmitted by the Council to the Secretary of the Interior and the Secretary of Agriculture.

Secretarial Review and Approval

The Secretary of the Interior, in consultation with the Secretary of Agriculture, makes the final decision regarding expenditures under the SNPLMA and has the authority to make any changes to the final recommendation. The Secretary of the Interior and the Secretary of Agriculture jointly make the final decision regarding expenditures under the FLTFA. The Secretaries' decisions consist of a list, in priority order, of acquisitions and projects for each category of allowable expenditure and a budget figure for each category under each Act. Any unspent balance will remain available within the respective project category.

VI. LAKE TAHOE RECOMMENDATION DEVELOPMENT PROCESS

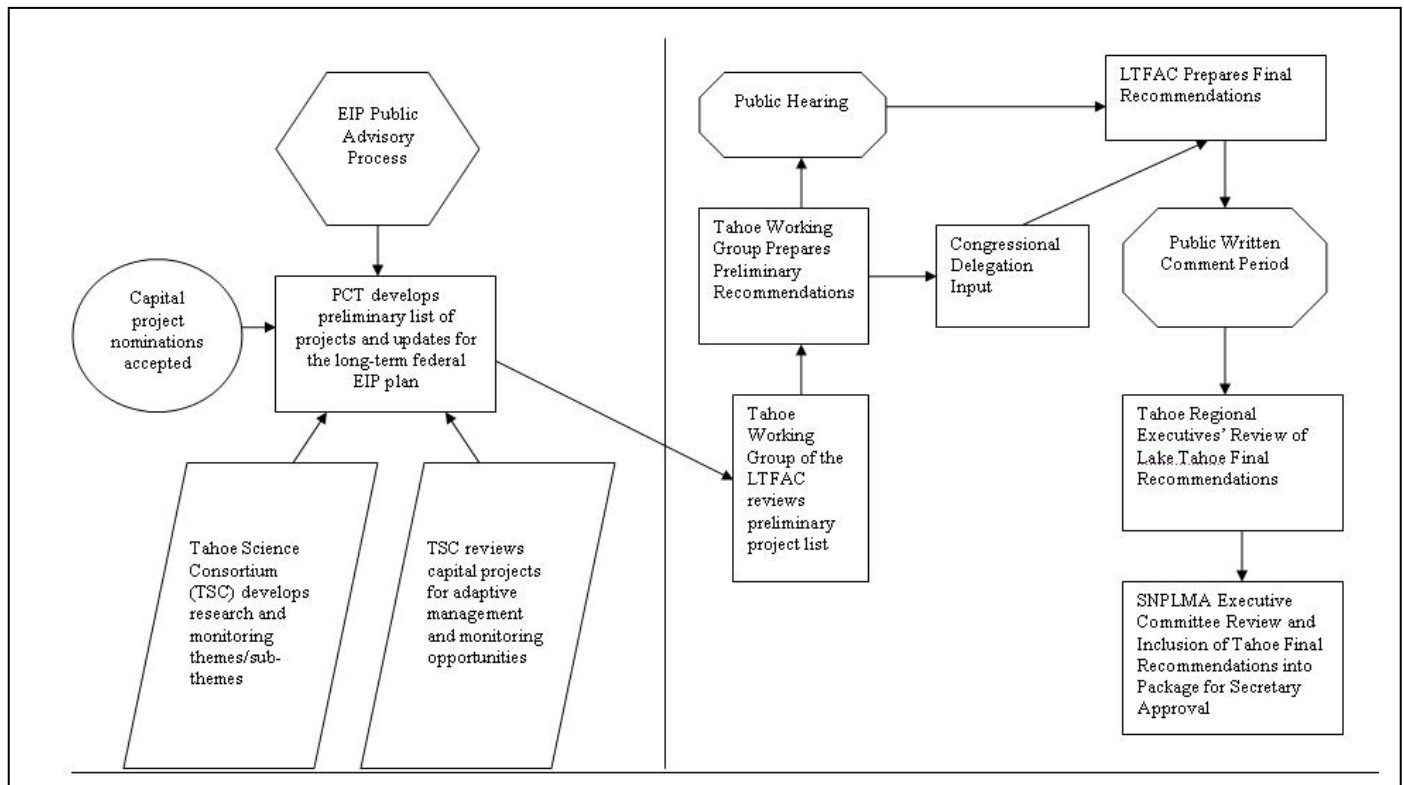
Lake Tahoe Restoration Projects may be nominated by any entity but projects must be vetted through the Partnership Coordination Team (PCT) (described below) and must be the responsibility of the Federal government in the Tahoe Environmental Improvement Program (which projects may be part of a larger project that involves non-Federal entities) and have a willing and ready Federal sponsor. The process for submitting and reviewing Lake Tahoe Restoration projects is separate and distinct, but generally parallel to the SNPLMA process (see Figure 3 below).

Nomination of Lake Tahoe Restoration Projects

The Lake Tahoe nomination process is parallel to, but separate from, the SNPLMA nomination process. The timeframe for the Lake Tahoe nomination process will generally coincide with the SNPLMA nomination process such that the Lake Tahoe Final Recommendation is submitted with adequate time for the SNPLMA Executive Committee consideration and inclusion in to the SNPLMA Final Recommendation, which is transmitted to the Secretary for approval. If the SNPLMA schedule for a round of nominations is not compatible with the Lake Tahoe annual nomination and recommendation schedule, the Executive Committee may elect to accept a TREX Final Recommendation and submit it separately from the next SNPLMA Final Recommendation provided sufficient additional SNPLMA revenue is projected to fund the Tahoe projects.

The Tahoe Working Group (TWG) receives nominated projects and will consider projects that have been vetted through the Partnership Coordination Team (PCT), which consists of

FIGURE 3: Lake Tahoe SNPLMA Project Recommendation Flow Chart



representatives from federal agencies that implement EIP projects and the TRPA. The PCT is responsible for providing TWG with a prioritized schedule of projects to facilitate a rational and informed selection process. The minimum standards for nominated projects for Lake Tahoe considered by the TWG are that the projects (1) are responsibilities of the federal government in the EIP (which may be part of a larger project that involves non-federal agencies), and (2) have a willing and ready federal sponsor that confirms that a project has been programmed through the PCT. The USDA Forest Service submits its agency's projects to the PCT from the Priority List required under the Lake Tahoe Restoration Act.

A. Tahoe Capital Projects

Nominated projects must have all required documentation as outlined in the Nomination Package Information for Lake Tahoe Restoration Projects provided in Appendix I and any additional information requested in the annual request for project proposals.

B. Tahoe Science Projects

The Tahoe Working Group will request the Tahoe Science Consortium provide a proposed list of research and monitoring resource areas and sub-categories to the PCT for incorporation in to the preliminary list developed by the PCT. The proposed TSC resource areas list will include input from management agencies prior to submittal to the PCT. Resource areas could include but are

not limited to water quality, air quality and forest health.

The proposed TSC resource areas list will include sub-categories with enough detail for the sponsoring agency to develop the interagency order with BLM, funding level for each effort, recipient Federal Agency to administer the RFP and associated grant or contract or administer the project if the Federal Agency will be implementing the project. These individual RFP-sized projects will be a paragraph to page in length description by sub-category so the TWG can develop the recommended list of projects to forward to the LTFAC.

Once the Secretary of the Interior has approved the list of Lake Tahoe capital projects and science resource areas, the recipient Federal Agency will issue a request for proposal or quotation (RFP/RFQ), pursuant to the individual agency competition and contracting requirements, to solicit approaches and to conduct the effort described in the sub-category project description. These RFPs/RFQs will be peer reviewed prior to selection of grantee/contractor. If the recipient agency intends to directly implement the sub-category projects, those project descriptions will be subject to a peer review process run by the TSC prior to implementation by the Federal Agency.

Ranking Nominations for Lake Tahoe Restoration Projects

The Tahoe Working Group (TWG) will consider nominated projects based primarily on the general guidance set forth in the Environmental Improvement Program (EIP), and further guided, as needed, by the following considerations:

1. Timing
 - a. Urgency for action
 - b. Readiness
2. Fiscal Considerations
 - a. Comparative cost/benefit analysis
 - b. Level of nonfederal contribution and partnership in funding, design, construction, operation, and maintenance (applicable only for partnership type projects that involve leveraging funds between agencies)
 - c. Funding and operational capacity to operate/maintain desired improvement
3. Support
 - a. Breadth and depth of support from federal, state, local stakeholders
 - b. Capacity and authority of implementing agency to perform (including operation and maintenance)
4. Science and Research Considerations (i.e. Adaptive Management)
 - a. Anticipated environmental threshold benefits of the proposed projects
 - b. Likelihood of contributing to achievement of environmental thresholds
 - c. Anticipated impacts of the proposed projects on environmental improvements
 - d. Certainty of the impacts of the proposed projects
 - e. Risk to the environment from unintended impacts or failure of the proposed projects
 - f. Applicability of project monitoring to adaptive management guidelines

The TSC will identify research and monitoring resource areas and sub-categories that will

directly contribute to the understanding of the effectiveness of environmental restoration activities. This information will be forwarded to the PCT for inclusion in the Preliminary Recommendation Package.

Assembling Lake Tahoe Restoration Projects Preliminary Recommendation

The TWG prepares the Preliminary Recommendation for Lake Tahoe, which includes all of the recommended projects, costs estimates and allowable expenses, and funding levels for the Lake Tahoe expenditure categories, taking into account the projected balance of the SNPLMA Special Account. The Preliminary Recommendation includes one list of the primary projects (Primary Category) that total the amount of funding being requested in a given round on a per project basis, and a second category (Secondary Category) of projects.

Of the amount recommended for approval for Lake Tahoe, a general guideline of approximately 10% of the overall funding for Lake Tahoe projects in a given round will be directed towards monitoring and analysis of the effectiveness of restoration projects and attainment of environmental threshold standards. The amount of funding necessary for monitoring and analysis may vary from year to year, dependent upon the current state of the science within the Tahoe Basin and the types of proposed projects. Of the amount recommended for approval for Lake Tahoe, funds for each project may be reserved as contingency funding for unexpected project cost overruns.

Public Review of Preliminary Recommendation for Lake Tahoe Restoration Projects

The Tahoe Working Group or the Lake Tahoe Federal Advisory Committee (LTFAC) shall conduct a public hearing to review the Preliminary Recommendation Package. In addition, the LTFAC shall provide the Preliminary Recommendation to the congressional delegation for input prior to the preparation of the Final Recommendation for Lake Tahoe

Lake Tahoe Restoration Projects Final Recommendation Development and Public Review

A. Development of Lake Tahoe Final Recommendation.

The LTFAC will request that administrative staff with the Forest Service (see below) prepare the Final Recommendation for Lake Tahoe for its review based on the Preliminary Recommendation, minutes of the public hearing, and input from the congressional delegation. The LTFAC role is to incorporate the input that is received regarding the nominated projects along with its own views, and to reconcile the nominated projects with the available funding. The LTFAC will also be responsible for assuring that the projects included in the Lake Tahoe Restoration Projects Recommendation maximize the use of all available funding prior to recommending SNPLMA funds being used. For example, the acquisition of environmentally sensitive land should come, first, from other sources, such as Section 4 of SNPLMA, Santini-Burton, and the Land and Water Conservation Fund, whenever possible.

The Final Recommendation shall specify a certain total funding amount derived from a per project basis for the Lake Tahoe projects included in the Primary Category. The Final

Recommendation shall allow for the flexibility to replace projects from the Secondary to Primary Category for Lake Tahoe Restoration Projects based on available funding approved by the Secretary, subject to the following guidelines. All projects that are funded shall come first from the Primary Category and then, if funds are available, to projects in the Secondary Category. A project from the Secondary Category may be funded only if a project from the Primary Category becomes infeasible or if actual costs of such a project are lower than estimated costs, and if the TWG determines that all other projects in the Primary Category are adequately funded. The TWG shall prioritize projects in the Secondary Category so that, if funds are available for such projects, the project with the highest priority for the amount of funding that becomes available shall be implemented. Conversely, if the Secretary approves funding that is less than the total amount of the Primary Category, the TWG will determine which project(s) shall be moved from the Primary Category to the Secondary Category.

The anticipated amount for funding recommendations from the SNPLMA Special Account for the Lake Tahoe Restoration Projects is expected to be approximately \$37.5 million annually until the amount allocated in accordance with section 342 of P.L. 108-108 is expended. In allocating each round of funding among Federal agencies for Lake Tahoe, if available, the Forest Service receives a minimum allocation of \$20 million, which includes any congressional earmarks, but would be in addition to fund allocations for Santini-Burton land acquisition and erosion control purposes to other Federal agencies.

B. Public Review of Lake Tahoe Final Recommendation.

The Final Recommendation for Lake Tahoe will be subject to a 30-day public written comment period prior to its consideration by the Tahoe Regional Executive Committee (TREX). This comment period may be conducted over the Internet, but the Lake Tahoe Basin Executive Committee (LTBEC) who are members of the Tahoe Working Group will provide a summary of the comments to the TREX along with their Final Recommendation for Lake Tahoe.

C. Approval of Lake Tahoe Final Recommendation for Submittal Through SNPLMA Executive Committee.

The TREX will review their Final Recommendation for Lake Tahoe and the written comments before it is sent to the Executive Committee for its consideration and inclusion in the SNPLMA Final Recommendation that is transmitted to the Secretary for approval. If the SNPLMA schedule for a round of nominations is not compatible with the Lake Tahoe annual nomination and recommendation schedule, the Executive Committee may elect to accept a TREX Final Recommendation separately from the next SNPLMA Final Recommendation. Such separate TREX Final Recommendation would be submitted to the Secretary of the Interior for approval of use of SNPLMA funds. Acceptance and submittal of a TREX Final Recommendation separately from a SNPLMA Final Recommendation would occur only if sufficient funds over and above the amount required for already approved projects were projected to be available in the Special Account to fund the projects in the separate TREX Final Recommendation.

The Secretary of the Interior, in consultation with the Secretary of Agriculture, makes the final decision regarding expenditures under the SNPLMA. The Secretaries' decisions consist of a list,

in priority order, of projects and an approved budget figure for each project. The Lake Tahoe projects do not receive a contingency percentage in addition to the requested amount because contingencies are calculated into the cost estimate when projects are nominated. The Secretary of Interior's decision may, on a round by round basis, approve priority funding for Lake Tahoe projects and may also authorize the TREX to reallocate costs between projects under certain specific circumstances. The approval for each round should be reviewed to see whether or not these associated approvals were provided.

VII. 2005 SOLICITOR'S OPINION REGARDING INTERPRETATION OF SNPLMA

A February 25, 2005, Office of the Solicitor opinion regarding interpretation of the SNPLMA determined that funds in the SNPLMA and FLTFA Special Accounts are considered appropriated funds. Therefore, the fundamental appropriation doctrine of "Necessary Expense" will now govern payment of costs associated with projects and acquisitions approved by the Secretaries. For a cost to be considered a necessary expense of the project or acquisition it must meet three criteria:

1. The expenditure must "make a direct contribution to carrying out the appropriation" which in the case of SNPLMA and FLTFA are expenditures authorized by Congress in SNPLMA and FLTFA as reflected in the projects and acquisitions approved by the Secretary of the Interior and Secretary of Agriculture;
2. The expenditure must not be prohibited by law; and
3. The expenditure must not be covered by another more specific source of funding, i.e., the specific approved project or acquisition must not be provided for in another appropriation or statutory funding scheme.

Direct Versus Indirect Costs

The necessary expense doctrine does not differentiate between direct and indirect costs. Therefore the prior prohibition to requesting indirect costs no longer applies. Nonetheless, Federal agencies and local and regional governmental entities shall not seek, and the BLM will not pay, the agency/entity standard overhead percent based on the total project cost. However, project-related indirect costs for support services may be charged at a percent based on staff time spent on the project(s), provided these expenses meet the three criteria above. Examples of such indirect costs would be secretarial support, printing, copying, cost-center expenses, etc. (See Appendix B-9 for other examples of necessary expenses.) Federal agencies and local and regional governmental entities are solely responsible for seeking any waivers from their headquarters and resolving any issues internally regarding not being allowed to assess such generic overhead charges.